

Ngo, 548 U.S. 81, 83–86 (2006); see also Jones v. Bock, 549 U.S. 199, 216 (2007) (“[F]ailure to exhaust is an affirmative defense under [42 U.S.C. § 1997e]”); Anderson v. XYZ Corr. Health Servs., Inc., 407 F.3d 674, 683 (4th Cir. 2005). “There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court.” Jones, 549 U.S. at 211–212 (citing Porter v. Nussle, 534 U.S. 516, 524 (2002)). A prisoner must exhaust his administrative remedies, regardless of the relief offered through administrative procedures. Booth v. Churner, 532 U.S. 731, 741 (2001).

The Bureau of Prisons (“BOP”) provides a four-step, sequential administrative process to address prisoner complaints. See 28 C.F.R. §§ 542.13–.15; Hill v. Haynes, 380 F. App’x 268, 269 n.1 (4th Cir. 2010) (per curiam) (unpublished). Likewise, section 1997e(a) requires an inmate to exhaust his administrative remedies before filing suit. See 42 U.S.C. § 1997e(a); Ford v. Johnson, 362 F.3d 395, 398 (7th Cir. 2004); Johnson v. Jones, 340 F.3d 624, 627–28 (8th Cir. 2003). When an inmate files suit early, courts typically dismiss the action without prejudice. See, e.g., Ford, 362 F.3d at 401; Johnson v. Cannon, C.A. No. 4:08-776-PMD, 2010 WL 936706, at *8 (D.S.C. Mar. 15, 2010) (unpublished); Stokes v. Moore, No. 5:08-CT-3045-FL, slip op. at 4 (E.D.N.C. Jan. 26, 2010) (unpublished); Shouse v. Madsen, No. 7:09-cv-00461, 2010 WL 276543, at *1 (W.D. Va. Jan. 19, 2010) (unpublished). A dismissal without prejudice allows the prisoner an opportunity to exhaust the administrative process and then file a new suit, if the prisoner so chooses.

Here, the John Doe defendants raise failure to exhaust as a defense to the suit. [D.E. 35] Plaintiff had notice of the defense and responded. [D.E. 41] Plaintiff argues that no administrative remedies were available to him because the violations at issue occurred after his release to a Community Correctional Center (“CCC”). [D.E. 41, 10-12] However, the John Doe defendants have

submitted the Declaration of Lynnell Cox, a Paralegal Specialist for the Federal Bureau of Prisons, which contradicts Owens' statement. [D.E. 37] Cox states "that during his incarceration, Mr. Owens filed 754 complaints regarding a plethora of issues through the BOP's administrative remedy program as provided for at 28 C.F.R. § 542.10, et seq."¹ [D.E. 37, ¶ 5] Moreover, Cox reviewed administrative remedy filings between May 22, 2007, when Owens was released to the CCC, and the present. [Id.] Owens filed eleven administrative complaints through the BOP's Administrative Remedy system after his release to the CCC and none of the complaints dealt with medical care or the issues asserted in this matter. [Id.]


Furthermore, Owens, in fact, raised the medical issues in a claim pursuant to the Federal Tort Claims Act ("FTCA") which was denied and a right to sue letter issued. [Id., ¶ 7 and Attachment 2 BOP denial letter] However, "[e]xhaustion requirements concerning FTCA and Bivens actions differ." Johnson v. Lappin, No. 1:07-0944, 2011 WL 560459, at *13 n. 11 (S.D.W.Va. Jan. 6, 2011), report and recommendation adopted, 2011 WL 535924 (S.D.W.Va. Feb. 8, 2011). The PLRA mandates proper exhaustion and exhaustion for the purposes of the FTCA does not comport with § 1997e(a). Norris v. United States, 2012 WL 2590010 (E.D.N.C. July 3, 2012) (unpublished). Owens has failed to properly exhaust the issues before the court in this matter. In light of the court's determination that Owens failed to exhaust remedies, the court must dismiss as to all defendants.

Accordingly, the motion to dismiss for failure to exhaust is GRANTED and the matter is DISMISSED IN ITS ENTIRETY WITHOUT PREJUDICE. [D.E. 35]. Having so determined, the

¹The regulations for grieving specifically state that "the inmate shall obtain the appropriate form from CCC staff . ." 28 CFR § 542.14(c)(1).

motion for reconsideration [D.E. 32] and motion to amend [D.E. 44] are DENIED as MOOT. The Clerk is DIRECTED to CLOSE the case.

SO ORDERED, this the 18 day of August 2012.


TERRENCE W. BOYLE
United States District Judge